Clarke v. *Welsh, supra.* The accumulation of ice and snow on the stairway, however, is such a temporary defect that the stairway is not considered out of repair on that account. *Purcell* v. *English, supra.*

MUNICIPAL CORPORATIONS—DEFECT IN STREETS—USE OF STREETS FOR TESTING AUTOMOBILES.—The plaintiff, while using the street for ordinary purposes, was injured by an automobile which the city authorities knowingly allowed to be run through the streets at a very rapid rate of speed in a test. The plaintiff brought an action against the city for damages occasioned by the injury. *Held,* the plaintiff can recover. *Burnett* v. *City of Greenville* (S. C.), 91 S. E. 203.

In some jurisdictions, in the absence of statute, it has been held that the duties of a municipal corporation in respect to its streets are governmental and legislative, and no implied liability exists in favor of one who receives injuries as a result of its failure to perform these duties. *Collier* v. *City of Fort Smith,* 73 Ark. 447, 84 S. W. 480, 68 L. R. A. 237; *McCutcheon* v. *Common Council of Homer,* 43 Mich. 483, 5 N. W. 668, 38 Am. Rep. 212. But the generally accepted doctrine of the American courts—even in the absence of statute expressly declaring the liability—is that where a municipal corporation proper is invested with the exclusive authority and control over the streets within its limits it owes the public the duty to exercise ordinary care to keep them reasonably safe for the usual mode of travel, and is liable for special injuries resulting from a neglect of such duty. *McCoull* v. *Manchester,* 85 Va. 579, 8 S. E. 379, 2 L. R. A. 691; *Albrittin* v. *Huntsville,* 60 Ala. 486, 31 Am. Rep. 46; 4 DILLION, MUN. CORP., 5 ed., § 1708; LILE, NOTES MUN. CORP., 3 ed., 55.

However, if the question does not concern the physical condition of the streets, but rather the use being made of them, entirely different principles are applicable. It is very generally held that a city's duties in respect to the use to be made of its streets are purely governmental and legislative, and there is no liability on the part of the city when the streets are used improperly. Thus, a city is not liable in damages for a failure to enact ordinances prohibiting an improper use of its streets. *Jones* v. *Williamsburg,* 97 Va. 722, 34 S. E. 883, 47 L. R. A. 294; *Kelley* v. *Milwaukee,* 18 Wis. 83. Nor is a city liable for a failure to enforce ordinances prohibiting the streets to be used improperly. *Goodwin* v. *Reidsville,* 160 N. C. 411, 76 S. E. 232, 42 L. R. A. (N. S.) 862; *Dudley* v. *Flemingsburg,* 115 Ky. 5, 72 S. W. 327, 60 L. R. A. 575, 103 Am. St. Rep. 253, 1 Ann. Cas. 958. But the contrary is held in some jurisdictions. *Hagerstown* v. *Klotz,* 93 Md. 437, 49 Atl. 836, 54 L. R. A. 940, 86 Am. St. Rep. 437.

Where the city, through its proper officers or agents, allows any improper use to be made of the streets it is not liable in damages to one who is injured as a result of such improper use. *McCarthy* v. *Munising,* 136 Mich. 622, 99 N. W. 865; *Toomey* v. *City of Albany,* 60 Hun. 580, 14 N. Y. Supp. 572; *Wilmington* v. *Vandegriff,* 1 Marv. (Del.) 5, 29 Atl. 1047, 25 L. R. A. 538, 65 Am. St. Rep. 256. Nor is a city liable where an ordinance which prohibits an improper use of the

street is suspended, and as a result one is injured. *Hill* v. *Charlotte*, 72 N. C. 55, 21 Am. Rep. 451; *Rivers* v. *Augusta*, 65 Ga. 376. But it has been held that where one uses the streets improperly, acting under a license or permit from the city council or mayor, and another is injured the city can be held liable. *Landau* v. *City of New York*, 180 N. Y. 48, 72 N. E. 631; *Speir* v. *City of Brooklyn*, 139 N. Y. 6, 21 L. R. A. 641. But this doctrine is not in accord with authority or reason. *Fifield* v. *Phoenix*, 4 Ariz. 283, 36 Pac. 916, 24 L. R. A. 430; *Lincoln* v. *Boston*, 148 Mass. 578. And it seems that the city is not liable where an improper use of the street is permitted by ordinance. See *Marth* v. *Kingfisher*, 22 Okla. 602, 98 Pac. 436, 18 L. R. A. (N. S.) 1238. See LILE, NOTES MUN. CORP., 3 ed., 61.

The principal case is contrary to the great weight of authority. The duty of a city to regulate the use of its streets is governmental and legislative, and there is no corresponding liability on the part of the city where the streets are used improperly even with its knowledge. *Pierce* v. *City of New Bedford*, 129 Mass. 534, 37 Am. Rep. 387; *Hutchinson* v. *Town of Concord*, 41 Vt. 271, 98 Am. Dec. 584; *McCarthy* v. *Munising*, *supra*. It has been held that where an automobile race was held in a public street by permission of the city an injured spectator could not recover damages from the city, since at the time of the injury he was not a traveler in the streets. *Bogart* v. *New York City*, 100 N. Y. 379, 39 N. E. 937. And even an injured traveler was not allowed to recover damages from the city where the injury resulted from a horse race improperly conducted in the public street. *Martin* v. *Kingfisher*, *supra*.

REAL PROPERTY—BOUNDARIES—AVULSION.—The main channel of the Mississippi river, constituting the boundary between the states of Illinois and Missouri, was, by sudden avulsion, transposed from one side of plaintiff's island to the other. Although submerged for a considerable period, the island remained intact and capable of identification upon reappearance. Upon its reappearance the defendant took possession of the island and claimed it as his own. *Held*, The island remained vested in its former owner, and under the dominion of the state to which it originally belonged. *Randolph* v. *Hinck* (Ill.), 115 N. E. 182.

It was a principle recognized in the early common law of England that if the sea overflowed land and later reflowed again the land still belonged to the original owner and not to the King, although it remained submerged forty years. 2 ROLLE, ABR. 168. It is this fundamental principle that finds expression in the more recent decisions of our jurisprudence, which hold that under ordinary conditions land lost by submergence may be regained by reliction. *Mulry* v. *Morton*, 100 N. Y. 424, 3 N. E. 581, 53 Am. Rep. 206. This rule, however, is subject to qualification in those cases where the lapse of time has been of such duration as to effectually preclude the identity of the property from being established upon its reliction. See *Chicago* v. *Ward*, 169 Ill. 392, 48 N. E. 927, 38 L. R. A. 849, 61 Am. St. Rep. 185.